

# FOREIGN SHIPPING PRACTICES ACT<sup>1</sup>

## SEC. 10001. SHORT TITLE.

This subtitle may be cited as the “Foreign Shipping Practices Act of 1988”.

## SEC. 10002. FOREIGN LAWS AND PRACTICES (46 App. U.S.C. 1710a (1999)).

(a) **Definitions.** For purposes of this section—

(1) “common carrier”, “marine terminal operator”, “ocean transportation intermediary”, “ocean common carrier”, “person”, “shipper”, “shippers’ association”, and “United States” have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 A.P. U.S.C. 1702);

(2) “foreign carrier” means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) “maritime services” means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) “maritime-related services” means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others’ behalf;

(5) “United States carrier” means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) “United States oceanborne trade” means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) **Authority to Conduct Investigations.** The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

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<sup>1</sup> Title I of Public Law 105-258, approved October 14, 1998 (112 STAT. 1902), the Ocean Shipping Reform Act of 1998, made comprehensive amendments to the Shipping Act of 1984. Section 111 of that Act (112 STAT. 1911) made conforming amendments to the Foreign Shipping Practices Act. Section 2 of Public Law 105-258, provides: “Except as otherwise expressly provided in this Act, this Act and the amendments made by this Act take effect May 1, 1999.”

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

**(c) Investigations.**

(1) Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or on the petition of any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(2) The Commission shall complete any such investigation and render a decision within 120 days after it is initiated, except that the Commission may extend such 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

**(d) Information Requests.**

(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

(2) In an investigation under subsection (b) of this section, the Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

**(e) Action Against Foreign Carriers.**

(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a

contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs and service contracts, including the right of an ocean common carrier to use any or all tariffs and service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed \$1,000,000 per voyage.

(2) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

**(f) Actions Upon Request of the Commission.** Whenever the conditions specified in subsection (b) of this section are found by the Commission to exist, upon the request of the Commission—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) **Report.** The Commission shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in subsection (b) of this section being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset such conditions;

(4) any recommendations for additional legislation to offset such conditions; and

(5) a list of petitions filed under subsection (c) of this section that the Commission rejected, and the reasons for each such rejection.

(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 13(b)(6) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(6)) or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

(i) Any rule, regulation or final order of the Commission issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

# TITLE 49, SUBTITLE IV—INTERSTATE TRANSPORTATION<sup>1</sup>

[EXCERPTS]

## TITLE II - SURFACE TRANSPORTATION BOARD

### CHAPTER 7 - SURFACE TRANSPORTATION BOARD.

#### 49 U.S.C. 701 (1999). ESTABLISHMENT OF BOARD.

(a) **Establishment.** There is hereby established within the Department of Transportation the Surface Transportation Board.

(b) **Membership.**

(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the

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<sup>1</sup> These provisions of law were enacted by Public Law 104-88, approved December 29, 1995 (109 STAT. 804), the I.C.C. Termination Act of 1995, as amended.

Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

**(c) Chairman.**

(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

**49 U.S.C. 702 (1999). FUNCTIONS.**

Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Board shall perform all functions that, immediately before January 1, 1996, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.

## **49 U.S.C. 703 (1999). ADMINISTRATIVE PROVISIONS.**

(a) **Executive Reorganization.** Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.

(b) **Open Meetings.** For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

(c) **Independence.** In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

(d) **Representation by Attorneys.** Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

(e) **Admission to Practice.** Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

(f) **Budget Requests.** In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

(2) an assessment of the budgetary needs of the Board.

(g) **Direct Transmittal to Congress.** The Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or Member of Congress, about the information.

**49 U.S.C. 704 (1999). ANNUAL REPORT.** The Board shall annually transmit to the Congress a report on its activities.

**49 U.S.C. 705 (1999). AUTHORIZATION OF APPROPRIATIONS.** There are authorized to be appropriated for the activities of the Board—

(1) \$8,421,000 for fiscal year 1996;

- (2) \$12,000,000 for fiscal year 1997; and
- (3) \$12,000,000 for fiscal year 1998.

**49 U.S.C. 706 (1999). REPORTING OFFICIAL ACTION.**

(a) **Reports on Proceedings.** The Board shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Board and, if damages are awarded, the findings of fact supporting the award. The Board may have its reports published for public use. A published report of the Board is competent evidence of its contents.

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**49 U.S.C. 721 (1999). POWERS.**

(a) **In General.** The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

(b) **Inquiries, Reports, and Orders.** The Board may—

(1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier;

(3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and

(4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5.

(c) **Subpoena Witnesses.**

(1) The Board may subpoena witnesses and records related to a proceeding of the Board from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Board, or a party to a proceeding before the Board, may petition a court of the United States to enforce that subpoena.

(2) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) **Depositions.**

(1) In a proceeding, the Board may take the testimony of a witness by deposition and may order the witness to produce records. A party to a



proceeding pending before the Board may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) If a witness fails to be deposed or to produce records under paragraph (1), the Board may subpoena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Board or agreed on by the parties by written stipulation filed with the Board. A deposition shall be filed with the Board promptly.

(e) **Witness Fees.** Each witness summoned before the Board or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

#### **49 U.S.C. 722 (1999). BOARD ACTION.**

(a) **Effective Date of Actions.** Unless otherwise provided in subtitle IV, the Board may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

(b) **Terminating and Changing Actions.** An action of the Board remains in effect under its own terms or until superseded. The Board may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Board. A court of competent jurisdiction may suspend or set aside any such action.

(c) **Reconsidering Actions.** The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

(1) reopen a proceeding;

(2) grant rehearing, reargument, or reconsideration of an action of the Board; or

(3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

(d) **Finality of Actions.** Notwithstanding subtitle IV, an action of the Board under this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.

#### **49 U.S.C. 723 (1999). SERVICE OF NOTICE IN BOARD PROCEEDINGS.**

(a) **Designation of Agent.** A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia, on whom service of notices in a proceeding before, and of actions of, the Board may be made.

(b) **Filing and Changing Designations.** A designation under subsection (a) shall be in writing and filed with the Board. The designation may be changed at any time in the same manner as originally made.

(c) **Service of Notice.** Except as otherwise provided, notices of the Board shall be served on its designated agent at the office or usual place of residence in the District of Columbia of that agent. A notice of action of the Board shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

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#### **49 U.S.C. 724 (1999). SERVICE OF PROCESS IN COURT PROCEEDINGS.**

(a) **Designation of Agent.** A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence in the District of Columbia of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(b) **Changing Designation.** A designation under this section may be changed at any time in the same manner as originally made.

**49 U.S.C. 725 (1999). ADMINISTRATIVE SUPPORT.** The Secretary of Transportation shall provide administrative support for the Board.

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**49 U.S.C. 727 (1999). DEFINITIONS.** All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.

## **CHAPTER 131. GENERAL PROVISIONS.**

### **49 U.S.C. 13101 (1999). TRANSPORTATION POLICY.**

(a) **In General.** To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

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(K) promote intermodal transportation;

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(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

(b) **Administration to Carry out Policy.** This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

**49 U.S.C. 13102 (1999). DEFINITIONS.** In this part, the following definitions shall apply:

(1) **Board.** The term “Board” means the Surface Transportation Board.

(2) **Broker.** The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) **Carrier.** The term “carrier” means a motor carrier, a water carrier, and a freight forwarder.

(4) **Contract Carriage.** The term “contract carriage” means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) **Control.** The term “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

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(8) **Freight Forwarder.** The term “freight forwarder” means a person holding itself out to the general public (other than as a pipeline,

rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle. The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

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(10) **Household Goods.** The term “household goods”, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

(11) **Household Goods Freight Forwarder.** The term “household goods freight forwarder” means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

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(15) **Noncontiguous Domestic Trade.** The term “noncontiguous domestic trade” means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(16) **Person.** The term “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(17) **Secretary.** The term “Secretary” means the Secretary of Transportation.

(18) **State.** The term “State” means the 50 States of the United States and the district of Columbia.

(19) **Transportation.** The term “transportation” includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to

the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(20) **United States.** The term “United States” means the States of the United States and the District of Columbia.

(21) **Vessel.** The term “vessel” means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(22) **Water carrier.** The term “water carrier” means a person providing water transportation for compensation.

#### **49 U.S.C. 13103 (1999). REMEDIES AS CUMULATIVE.**

Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

### **CHAPTER 133. ADMINISTRATIVE PROVISIONS.**

#### **49 U.S.C. 13301 (1999). POWERS.**

(a) **General Powers of Secretary.** Except as otherwise specified, the Secretary shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

(b) **Obtaining Information.** The Secretary may obtain from carriers providing, and brokers for, transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker, information the Secretary decides is necessary to carry out this part.

#### **(c) Subpoena Power.**

(1) *By Secretary.* The Secretary may subpoena witnesses and records related to a proceeding under this part from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding under this part, may petition a court of the United States to enforce that subpoena.

(2) *Enforcement.* The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the

district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

**(d) Testimony of witnesses.**

(1) *Procedure for Taking Testimony.* In a proceeding under this part, the Secretary may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending under this part may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) *Subpoena.* If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Secretary may subpoena the witness to take a deposition, produce the records, or both.

(3) *Depositions.* A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) *Notice of Deposition.* Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) *Transcript.* The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) *Foreign Country.* The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. A deposition shall be filed with the Secretary promptly.

(e) **Witness Fees.** Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

(f) **Powers of Board.** For those provisions of this part that are specified to be carried out by the Board, the Board shall have the same powers as the Secretary has under this section.

**49 U.S.C. 13302 (1999). INTERVENTION.** Under regulations of the Secretary, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this part related to transportation sub-

ject to jurisdiction under subchapter I of chapter 135 shall be given to interested persons.

#### **49 U.S.C. 13303 (1999). SERVICE OF NOTICE IN PROCEEDINGS.**

(a) **Agents for Service of Process.** A carrier, a broker, or a freight forwarder providing transportation or service subject to jurisdiction under chapter 135 shall designate, in writing, an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Secretary may be made.

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(c) **Notice.** A notice to a motor carrier, freight forwarder, or broker shall be served personally or by mail on the motor carrier, freight forwarder, or broker or on its designated agent. Service by mail on the designated agent shall be made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier, freight forwarder, or broker does not have a designated agent, service may be made by posting a copy of the notice at the headquarters of the Department of Transportation.

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### **CHAPTER 135. JURISDICTION**

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#### **SUBCHAPTER II. WATER CARRIER TRANSPORTATION**

#### **49 U.S.C. 13521 (1999). GENERAL JURISDICTION.**

(a) **General Rules.** The Secretary and the Board have jurisdiction over transportation insofar as water carriers are concerned—

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—

(A) by motor carrier that is in the United States; and

(B) by water carrier that is from a place in the United States to another place in the United States; and

(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—

(A) when the transportation is by motor carrier, the transportation is provided in the United States;



(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) **Definitions.** In this section, the terms “State” and “United States” include the territories and possessions of the United States.

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### **SUBCHAPTER III. FREIGHT FORWARDER SERVICE**

#### **49 U.S.C. 13531 (1999). GENERAL JURISDICTION.**

(a) **In General.** The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—

(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) a place in a State and another place in the same State through a place outside the State; or

(3) a place in the United States and a place outside the United States.

### **SUBCHAPTER IV. AUTHORITY TO EXEMPT.**

#### **49 U.S.C. 13541 (1999). Authority to Exempt Transportation or Services.**

(a) **In General.** In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—

(1) is not necessary to carry out the transportation policy of section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.

(b) **Initiation of Proceeding.** The Secretary or Board, as applicable, may, where appropriate, begin a proceeding under this section on the

Secretary's or Board's own initiative or on application by an interested party.

(c) **Period of Exemption.** The Secretary or Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

(d) **Revocation.** The Secretary or Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 13101.

(e) **Limitations.**

(1) *In General.* The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or activities approved under section 13703 or 14302 or not terminated under section 13907(d)(2).

(2) *Water Carriers.* The Secretary or Board, as applicable, may not exempt a water carrier from the application of, or compliance with, section 13701 or 13702 for transportation in the non-contiguous domestic trade.

(f) **Continuation of Certain Existing Exemptions for Water Carriers.** The Secretary or Board, as applicable, shall not regulate or exercise jurisdiction under this part over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under Federal law in effect on November 1, 1995.

## **CHAPTER 137. RATES AND THROUGH ROUTES**

### **49 U.S.C. 13701 (1999). REQUIREMENTS FOR REASONABLE RATES, CLASSIFICATIONS, THROUGH ROUTES, RULES, AND PRACTICES FOR CERTAIN TRANSPORTATION.**

(a) **Reasonableness.**

(1) *Certain Household Goods Transportation; Joint Rates Involving Water Transportation.* A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

(A) a movement of household goods,

(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or

(C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703, must be reasonable.

(2) *Through Routes and Divisions of Joint Rates.* Through routes and divisions of joint rates for such transportation or service must be reasonable.

(b) **Prescription by Board for Violations.** When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) **Filing of Complaint.** A complaint that a rate, classification, rule, or practice in noncontiguous domestic trade violates subsection (a) may be filed with the Board.

(d) **Zone of Reasonableness.**

(1) *In General.* For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

(2) *Adjustments to the Zone.* The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

(3) *Determinations after Complaint.* The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

(4) *Reparations.* Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding or violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).

## **49 U.S.C. 13702 (1999). TARIFF REQUIREMENT FOR CERTAIN TRANSPORTATION.**

(a) **In General.** Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

(2) for movement of household goods;

only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

**(b) Tariff Requirements for Noncontiguous Domestic Trade.<sup>2</sup>**

(1) *Filing.* A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) *Contents.* The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

- (A) the carriers that are parties to it;
- (B) the places between which property will be transported;
- (C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;
- (D) privileges given and facilities allowed; and
- (E) any rules that change, affect, or determine any part of the published rate.

(3) *Inland Divisions.* A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of that through rate.

(4) *Time-Volume Rates.* Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

(5) *Changes.* The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this

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<sup>2</sup> The Surface Transportation Board (Board), in STB Ex Parte No. 580, served February 3, 1999, revised its tariff filing regulations, effective May 1, 1999, to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission's Automated Tariff Filing and Information System, which was phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs in alternative electronic formats.

subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

(A) publish new tariffs that incorporate changes, or

(B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

(6) *Complaints.* A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

**(c) Tariff Requirements for Household Goods Carriers.**

(1) *In General.* A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

(2) *Notice of Availability.* A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

(3) *Requirements.* A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this part. A tariff that does not comply with this subsection may not be enforced against any individual shipper.

(4) *Incorporation by Reference.* A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

(5) *Complaints.* A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(d) **Invalidation.** The Board may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Board carrying out this section.

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**49 U.S.C. 13707 (1999). PAYMENT OF RATES.**

(a) **Transfer of Possession upon Payment.** Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

**(b) Exceptions.**

(1) *Regulations.* Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.

(2) *Extensions of Credit to Governmental Entities.* Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

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**49 U.S.C. 13712 (1999). GOVERNMENT TRAFFIC.** A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

## **CHAPTER 141. OPERATIONS OF CARRIERS**

### **SUBCHAPTER I. GENERAL REQUIREMENTS**

**49 U.S.C. 14101 (1999). PROVIDING TRANSPORTATION AND SERVICE.**

(a) **On Reasonable Request.** A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

**(b) Contracts with Shippers.**

(1) *In General.* A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and

remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) *Remedy for Breach of Contract.* The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

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**49 U.S.C. 14121 (1999). DEFINITIONS.** In this subchapter, the following definitions apply:

(1) **Carrier and Broker.** The terms “carrier” and “broker” include a receiver or trustee of a carrier and broker, respectively.

(2) **Association.** The term “association” means an organization maintained by or in the interest of a group of carriers or brokers providing transportation or service subject to jurisdiction under chapter 135 that performs a service, or engages in activities, related to transportation under this part.

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## SUBCHAPTER II. REPORTS AND RECORDS

**49 U.S.C. 14122 (1999). RECORDS; FORM; INSPECTION; PRESERVATION.**

(a) **Form of Records.** The Secretary or the Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers, including records related to movement of traffic and receipts and expenditures of money.

(b) **Right of Inspection.** The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

(2) inspect and copy any record of—

(A) a carrier, broker, or association; and

(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person’s relation to, or transaction with, that carrier.

(c) **Period for Preservation of Records.** The Secretary or Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers and brokers.

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## 49 U.S.C. 14123 (1999). FINANCIAL REPORTING.

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(2) *Other Reports.* The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

(b) **Matters to be Covered.** In determining the matters to be covered by any reports to be filed under subsection (a), the Secretary shall consider—

- (1) safety needs;
- (2) the need to preserve confidential business information and trade secrets and prevent competitive harm;
- (3) private sector, academic, and public use of information in the reports; and
- (4) the public interest.

(c) **Exemptions.**

(1) *From filing.* The Secretary may exempt upon good cause shown any party from the financial reporting requirements of subsection (a). Any request for such exemption must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

(2) *From Public Release.*

(A) In General. The Secretary shall allow, upon request, a filer of a report under subsection (a) that is not a publicly held corporation or that is not subject to financial reporting requirements of the Securities and Exchange Commission, an exemption from the public release of such report.

(B) Procedure. After a request under subparagraph (A) and notice and opportunity for comment but in no event later than 90 days after the date of such request, the Secretary shall approve such request if the Secretary finds that the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.

(C) Use of Data for Internal DOT Purposes. If an exemption is granted under this paragraph, nothing shall prevent the Secretary from using data from reports filed under this subsection for internal purposes of the Department of Transportation or including such data in aggregate industry statistics released for publication if such inclusion would not render the filer's data readily identifiable.



(D) Pending Requests. The Secretary shall not release publicly the report of a carrier making a request under subparagraph (A) while such request is pending.

(3) *Period of Exemptions.* Exemptions granted under this subsection shall be for 3-year periods.

(d) **Streamlining and Simplification.** The Secretary shall streamline and simplify, to the maximum extent practicable, any reporting requirements the Secretary imposes under this section.

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## **CHAPTER 147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES.**

### **49 U.S.C. 14701 (1999). GENERAL AUTHORITY.**

(a) **Investigations.** The Secretary or the Board, as applicable, may begin an investigation under this part on the Secretary's or the Board's own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) **Complaints.** A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

(c) **Deadline.** A formal investigative proceeding begun by the Secretary or Board under subsection (a) of this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3d year after the date on which it was begun.

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**49 U.S.C. 14703 (1999). ENFORCEMENT BY THE ATTORNEY GENERAL.** The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings—

(1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part; and

(2) to prosecute a person violating this part or a regulation or order of the Secretary or Board or term of registration under this part.

#### **49 U.S.C. 14704 (1999). RIGHTS AND REMEDIES OF PERSONS INJURED BY CARRIERS OR BROKERS.**

##### **(a) In General.**

(1) *Enforcement of Order.* A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) *Damages for Violations.* A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) **Liability and Damages for Exceeding Tariff Rate.** A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

##### **(c) Election.**

(1) *Complaint to DOT or Board; Civil Action.* A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

(2) Order of DOT or Board.

(A) In General. When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay damages only when the proceeding is on complaint.

(B) Enforcement by Civil Action. The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

(d) **Procedure.**

(1) *In General.* When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) *Parties.* All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(e) **Attorney's Fees.** The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

**49 U.S.C. 14705 (1999). LIMITATION ON ACTIONS BY AND AGAINST CARRIERS.**

(a) **In General.** A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) **Overcharges.** A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) **Damages.** A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

(d) **Extensions.** The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) **Payment.** A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

(f) **Government Transportation.** This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of—

- (1) payment of the rate for the transportation or service involved;
- (2) subsequent refund for overpayment of that rate; or
- (3) deduction made under section 3726 of title 31.

(g) **Accrual Date.** A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

#### **49 U.S.C. 14706 (1999). LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.**

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##### **(c) Special Rules.**

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(2) *Water Carriers.* If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

##### **(d) Civil Actions.**

(1) *Against Delivering Carrier.* A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) *Against Carrier Responsible for Loss.* A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) *Jurisdiction of Courts.* A civil action under this section may be brought in a United States district court or in a State court.

(4) *Judicial District Defined.* In this section, “judicial district” means—

(A) in the case of a United States district court, a judicial district of the United States; and

(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

**(e) Minimum Period for Filing Claims.**

(1) *In General.* A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) *Special Rules.* For the purposes of this subsection—

(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(B) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

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**(g) Modifications and Reforms.**

(1) *Study.* The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

(2) *Factors to Consider.* In conducting the study, the Secretary, at a minimum, shall consider—

(A) the efficient delivery of transportation services;

(B) international and intermodal harmony;

(C) the public interest; and

(D) the interest of carriers and shippers.

(3) *Report.* Not later than 12 months after January 1, 1996, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.

## CHAPTER 149. CIVIL AND CRIMINAL PENALTIES

### 49 U.S.C. 14901 (1999). GENERAL CIVIL PENALTIES.

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#### (g) **Business Entertainment Expenses.**

(1) *In General.* Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not constitute a violation of this part if that expense would not be unlawful if incurred by a person not subject to this part.

(2) *Cost of Service.* Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.

### 49 U.S.C. 14902 (1999). CIVIL PENALTY FOR ACCEPTING REBATES FROM CARRIER. A person—

(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 for transportation under this part or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702; is liable to the United States for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

### 49 U.S.C. 14903 (1999). TARIFF VIOLATIONS.

(a) **Civil Penalty for Undercharging and Overcharging.** A person that offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 at a rate different than the rate in effect under section 13702 is liable to the United States for a civil penalty of not more than \$100,000 for each violation.

(b) **General Criminal Penalty.** A carrier providing transportation or service subject to jurisdiction under chapter 135 or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is sub-

ject to jurisdiction under that chapter, that willfully does not observe its tariffs as required under section 13702, shall be fined under title 18 or imprisoned not more than 2 years, or both.

(c) **Actions of Agents and Employees.** When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) **Venue.** Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

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**49 U.S.C. 14906 (1999). EVASION OF REGULATION OF CARRIERS AND BROKERS.** A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of \$200 for the first violation and at least \$250 for a subsequent violation.

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**49 U.S.C. 14908 (1999). UNLAWFUL DISCLOSURE OF INFORMATION.**

(a) **Disclosure of Shipment and Routing Information.**

(1) *Violations.* A carrier or broker providing transportation subject to jurisdiction under subchapter I, II, or III of chapter 135 or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not disclose to another person, except the shipper or consignee, and a person may not solicit, or receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(2) *Penalty.* A person violating paragraph (1) of this subsection is liable to the United States for a civil penalty of not more than \$2,000.

(b) **Limitation on Statutory Construction.** This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

**49 U.S.C. 14909 (1999). DISOBEDIENCE TO SUBPOENAS.**

Whoever does not obey a subpoena or requirement of the Secretary or the Board to appear and testify or produce records shall be fined under title 18 or imprisoned not more than 1 year, or both.

**49 U.S.C. 14910 (1999). GENERAL CIVIL PENALTY WHEN SPECIFIC PENALTY NOT PROVIDED.** When another civil penalty is not provided under this chapter, a person that violates a provision of this part or a regulation or order prescribed under this part, or a condition of a registration under this part related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135 or a condition of a registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable to the United States for a civil penalty of \$500 for each violation. A separate violation occurs each day the violation continues.

**49 U.S.C. 14911 (1999). PUNISHMENT OF CORPORATION FOR VIOLATIONS COMMITTED BY CERTAIN INDIVIDUALS.** An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

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**49 U.S.C. 14913 (1999). CONCLUSIVENESS OF RATES IN CERTAIN PROSECUTIONS.** When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903. A departure, or offer to depart, from that published or filed rate is a violation of those sections.

**49 U.S.C. 14914 (1999). CIVIL PENALTY PROCEDURES.**

(a) **In General.** After notice and an opportunity for a hearing, a person found by the Surface Transportation Board to have violated a provi-



sion of law that the Board carries out or a regulation prescribed under that law by the Board that is related to transportation which occurs under subchapter II of chapter 135 for which a civil penalty is provided, is liable to the United States for the civil penalty provided. The amount of the civil penalty shall be assessed by the Board by written notice. In determining the amount of the penalty, the Board shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) **Compromise.** The Board may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) **Collection.** If a person fails to pay an assessment of a civil penalty after it has become final, the Board may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) **Refunds.** The Board may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within 1 year from the date of payment; and

(2) the Board finds that the penalty was unlawfully, improperly, or excessively imposed.

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